

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
ST. REGIS PAPER COMPANY,

Appellant,

**v.**

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 80-224

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER, the appeal from the issuance of two \$250 civil penalties for emissions allegedly in violation of chapter 173-405 WAC pertaining to kraft pulping mills, having come on regularly for formal hearing on March 11, 1981, in Tacoma, Washington, and appellant represented by its attorney Michael R. Thorp and respondent represented by its attorney Keith D. McGoffin, with William A. Harrison, Administrative Law Judge, presiding, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 1st day of May, 1981, and more than twenty days having elapsed

1 from said service; and

2 The Board having received no exceptions to said Proposed Order  
3 and the Board being fully advised in the premises; NOW THEREFORE,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed  
5 Order containing Findings of Fact, Conclusions of Law and Order dated  
6 the 1st day of May, 1981, and incorporated by reference herein and  
7 attached hereto as Exhibit A, are adopted and hereby entered as the  
8 Board's Final Findings of Fact, Conclusions of Law and Order herein.

9 DONE this 28<sup>th</sup> day of May, 1981.

10 POLLUTION CONTROL HEARINGS BOARD

11 Nat W Washington  
12 NAT W. WASHINGTON, Chairman

13 David Akana  
14 DAVID AKANA, Member

15 Gayle Rothrock  
16 GAYLE ROTHROCK, Member

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PROPOSED FINDINGS OF FACT,  
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AND ORDER

This matter, the appeal of two \$250 civil penalties for emissions allegedly in violation of chapter 173-405 WAC pertaining to kraft pulping mills, came for hearing before the Pollution Control Hearings Board, Nat W. Washington, Chairman, convened at Tacoma, Washington, on March 11, 1981. William A. Harrison, Administrative Law Judge, presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its attorney, Michael R. Thorp. Respondent appeared by its attorney, Keith D. McGoffin. Court reporter Kim Otis

EXHIBIT A

1 recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From  
3 testimony heard and exhibits examined, the Pollution Control Hearings  
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Appellant, St. Regis Paper Company, owns and operates the subject  
8 kraft pulping mill in the central industrial area of Tacoma. On  
9 September 8, 1980, while on routine patrol, respondent's inspector  
10 observed a brown colored smoke plume emanating from the by-pass stack  
11 of appellant's No. 3 recovery boiler. That plume was of 100% opacity  
12 for 9-1/2 consecutive minutes. While that plume continued, the  
13 inspector turned his attention to another brown colored smoke plume  
14 emanating from the main stacks of appellant's No. 3 recovery boiler.  
15 That plume was of 100% opacity for 11 consecutive minutes. While  
16 there are two main stacks, they are located so closely together as to  
17 produce, in this instance, a single plume. The main stacks are some  
18 distance from the by-pass stack, however, which emitted its own  
19 distinct plume.

20 Within an hour of his observations, the inspector contacted an  
21 official in appellant's mill and served him with two notices of  
22 violation. Appellant later received two Notices of Civil Penalty  
23 (Nos. 4896 and 4987) each assessing a \$250 civil penalty for violation  
24 of WAC 173-405-036(6), an emission standard for kraft pulping mills  
25 adopted by the State Department of Ecology (DOE). These were issued  
26

27 PROPOSED FINDINGS OF FACT,  
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1 on the basis of one violation for each of the two plumes observed.  
2 From these, appellant appeals.

## 3 II

4 Appellant stipulates that it caused the emissions in question, and  
5 that their opacity exceeds the limits of WAC 173-405-036(6) cited by  
6 respondent. Appellant raises two issues in this appeal:

7 1. Whether there has been but one violation rather than two as  
8 contended by respondent?

9 2. Whether, in any event, the violation or violations are excused  
10 by WAC 173-405-077 which was adopted shortly before this incident by  
11 DOE as part of its standards for kraft pulping mills?

## 12 III

13 Appellant's mill is normally in operation 24 hours per day, seven  
14 days a week. Both maintenance requirements and appellant's labor  
15 contract, however, necessitate shutdown of the mill occasionally. At  
16 the time in question these shutdowns were scheduled for the 4th of  
17 July, Labor Day and Christmas. Respondent was notified in advance of  
18 the shutdown for Labor Day which preceeded the events in question.  
19 The emissions observed by the inspector were the consequence of mill  
20 startup following that shutdown. In making the startup the No. 3  
21 recovery boiler in question, a No. 4 recovery boiler and a No. 6 power  
22 boiler are started simultaneously. The steam which these produce is  
23 initially inadequate to operate both the pulping process and the air  
24 pollution control devices on the 3 above boilers. Consequently steam  
25 is routed to the pulping process which, in 4 to 16 hours, will feed

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1 back to the boilers sufficient by-product to create high pressure  
2 steam to operate the air pollution control devices on the boilers.  
3 This operational procedure starts the pulping process with an  
4 efficiency that is considered necessary and normal in the industry.

5 Respondent's expert witness, a representative of DOE, did not  
6 dispute the design of the process or air pollution control equipment.  
7 Rather, he testified that the two boilers not in question, (No. 4  
8 recovery and No. 6 power) could be started first, then the pulping  
9 process, then No. 3 recovery boiler. This change in operation would  
10 reduce or eliminate startup emissions at the sacrifice of "unknown  
11 efficiency" in the pulping process.

#### 12 IV

13 Appellant telephoned a report of the emissions in question to  
14 respondent when the emissions began. Respondent made a written  
15 request for a report on the emissions' cause and on preventive  
16 measures to be taken in the future. Appellant filed a written,  
17 responsive report inviting further questions regarding the subject.  
18 No further questions were asked, nor was appellant informed that its  
19 report was not adequate prior to assessment of the penalties at issue.

#### 20 V

21 Any Conclusion of Law which should be deemed a Finding of Fact is  
22 hereby adopted as such.

23 From these Findings the Board comes to the following  
24  
25

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27 CONCLUSIONS OF LAW & ORDER

CONCLUSIONS OF LAW

I

Appellant contends that the single boiler which is the "source" of the emissions in question requires a conclusion that the emission standard was violated only once. We disagree.

Appellant's argument fails because of the exact wording used in the regulation at issue, WAC 173-405-036(6), which states:

No person shall cause or allow the emission of a plume from any kraft recovery furnace...

Here there was one furnace, with three stacks, but with two distinct plumes each of which was in excess of the emission standard.

We conclude that appellant twice exceeded the standard of WAC 173-405-036(6).<sup>1</sup>

II

Exceeding the standard of WAC 173-405-036(6) is excusable and will not result in violation under specified conditions. WAC 173-405-077(3). These conditions are set out at WAC 173-405-077(2):

- (a) The incident was reported as required; and
- (b) Complete details were furnished the department or agency; and
- (c) Appropriate remedial steps were taken to minimize excessive emissions and their impact on ambient air quality; and
- (d) The incident was unavoidable.

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1. This conclusion is supported by Exhibit R-21 which is DOE's "Source Test Method A" for visual determination of opacity. That method provides for observation "perpendicular to the plume direction" including the case of multiple stacks "(e.g. stub stacks on baghouses)".

1 We conclude that appellant complied with the conditions (a), (b) and  
2 (c), above.

3 III

4 Regarding condition (d) that the incident be unavoidable, the  
5 regulation goes on at WAC 173-405-077(5)(c), to require the kraft mill  
6 (appellant) to demonstrate that maintenance, design and operation of  
7 equipment is not inadequate. Appellant has demonstrated adequate  
8 maintenance and design which respondent did not rebut in this case.

9 With regard to operation of equipment, appellant carried its  
10 burden of going forward with the evidence. It did this by showing  
11 that the simultaneous startup of its three boilers is an operational  
12 procedure that starts the pulping process with an efficiency  
13 considered necessary and normal in the industry. Respondent's  
14 evidence that a different operational technique could be used at the  
15 sacrifice of "unknown efficiency" was not sufficient to rebut the  
16 evidence of appellant in this case. Therefore, the emissions in  
17 excess of standard should be excused under WAC 173-405-077(3).

18 IV

19 We do not conclude that the periodic shutdown and startup  
20 procedure could not be shown to create avoidable emissions by  
21 different evidence in a future case.

22 V

23 Any Finding of Fact which should be deemed a Conclusion of Law is  
24 hereby adopted as such.

25 From these Conclusions the Board enters this

26 PROPOSED FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER



ORDER

The two violations and civil penalties at issue are each hereby  
excused and vacated.

DONE at Lacey, Washington, this 1<sup>st</sup> day of May, 1981.

POLLUTION CONTROL HEARINGS BOARD

*William A. Harrison*

WILLIAM A. HARRISON  
Administrative Law Judge

PROPOSED FINDINGS OF FACT,  
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